



**THE HUMAN RIGHTS CRISIS AT RIKERS ISLAND:
A CALL TO ACTION FOR ALL JUSTICE SYSTEM STAKEHOLDERS**

**ISSUED BY THE CORRECTIONS & COMMUNITY REENTRY COMMITTEE,
MASS INCARCERATION TASK FORCE AND
CRIMINAL JUSTICE OPERATIONS COMMITTEE**

The situation at Rikers and other New York City jails is catastrophic and an ongoing human rights and constitutional violation. Sixteen people died in City jails in 2021 as the City has failed to meet the challenges of the pandemic, pervasive violence, lawlessness, and staff absenteeism.¹ In a recent ruling, Judge April A. Newbauer ordered the release of a person incarcerated at Rikers Island, crediting the person’s account of “squalid conditions, rampant violence among and to detainees, and a lack of essential services such as food and water.”² In September, the chief medical officer at Rikers stated that there is “a collapse in basic jail operations, such that today I do not believe the city is capable of safely managing the custody of those it is charged with incarcerating in its jails, nor maintaining the safety of those who work there.”³ The outgoing commissioner of the Department of Correction stated last month that the “risks to the human beings in our custody are at a crisis level.”⁴ After touring the jail complex in September 2021 and January 2022, several elected officials described “a horror house of abuse and neglect” where feces flowed from toilets onto floors, people

¹ Jan Ransom, “On Rikers, Brooklyn Man Becomes Latest Detainee to Die in Custody,” N.Y. Times, Dec. 15, 2021, <https://www.nytimes.com/2021/12/15/nyregion/rikers-island-deaths.html>; Jan Ransom, Jonah E. Bromwich and Rebecca Davis O’Brien, “Inside Rikers: Dysfunction, Lawlessness and Detainees in Control,” N.Y. Times, Oct. 11, 2021, <https://www.nytimes.com/2021/10/11/nyregion/rikers-detainees-correction-officers.html> (all websites last visited Feb. 3, 2022).

² *People ex rel. Burse v Schiraldi*, 2021 NY Slip Op 21351 (Sup. Ct. NY Co. Dec. 22, 2021), https://www.nycourts.gov/reporter/3dseries/2021/2021_21351.htm#3CASE; see also Jan Ransom, “A Look Inside Rikers: ‘Fight Night’ and Gang Rule, Captured on Video,” N.Y. Times, Jan. 12, 2022, <https://www.nytimes.com/2022/01/12/nyregion/rikers-jail-videos.html> (detailing the account of the relator in *People ex rel. Burse*, who described being forced by gang leaders to participate in “fight night” with other incarcerated persons for the entertainment of gang leaders).

³ Gloria Pazmino, “Rikers chief medical officer: Jail needs ‘outside help’,” NY1, Sept. 10, 2021, <https://www.ny1.com/nyc/all-boroughs/politics/2021/09/11/rikers-island-chief-jails-medical-officer-says-nyc-cannot-safely-manage-it>.

⁴ Caroline Lewis, “As COVID Surges In NYC Jails, Officials Quibble Over Blame,” Gothamist, Dec. 23, 2021, <https://gothamist.com/news/covid-surges-nyc-jails-officials-quibble-over-blame>.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

slept without cots or bedding, and many went unfed and without basic medical care.⁵ The court-appointed federal monitor for Rikers, who for years has reported a culture of violence, “unprofessional conduct and hyper-confrontational behavior by staff,”⁶ has explained that conditions at Rikers “have further deteriorated in the past few months with a steady increase in serious use of force incidents, a disturbing rise in the level of security lapses and unchecked breaches and failures of basic security protocols, and instances of inadequate supervision, all of which are compounded by staffing challenges.”⁷

RECOMMENDATIONS SUBMITTED TO STATE AND LOCAL LEADERS

Against this backdrop, in October the New York City Bar Association called “on all related stakeholders to take urgently needed steps to address the crisis at Rikers.”⁸ Relatedly, we called upon all of New York City’s district attorneys to (1) seek the release of as many people incarcerated pretrial as possible with dismissals and non-incarcerative plea and (2) refrain from seeking bail except where absolutely necessary, and then only seeking affordable bail.⁹

Since the outbreak of the pandemic, we have regularly called upon the Governor, the Mayor, district attorneys, and other elected officials to take urgent action, including releasing as many people as possible from jails consistent with public safety, and providing adequate funding for alternative to incarceration programs and pretrial supervision programming.¹⁰ We continue to reiterate such calls, and we now add the court system as an important stakeholder in addressing this crisis.

⁵ Assembly Member Emily Gallagher, [@EmilyAssembly]. “I want to share more about what I witnessed at Rikers Island yesterday. We broke into groups to inspect different parts of the sprawling facility. I spent several hours at the Otis Bantum Correctional Center.” (Thread). Twitter, Sept. 14, 2021, <https://twitter.com/EmilyAssembly/status/1437787192903049238>; Rep. Alexandria Ocasio-Cortez, [@RepAOC]. “The conditions at Rikers Island are a humanitarian crisis. We, along with @RepJerryNadler, @RepBowman and @NydiaVelazquez, strongly believe that Rikers should be immediately decarcerated and shut down. Read our letter to @GovKathyHochul and @NYCMayor.” Twitter, Sept. 21, 2021, <https://twitter.com/RepAOC/status/1440369091374583809>; Graham Rayman, “Rikers Island conditions still horrific, say NYC Council members after tour,” Daily News, Jan. 7, 2022, <https://www.nydailynews.com/new-york/nyc-crime/ny-rikers-council-visit-20220107-6kz33mvsmsgzcmwvj4grflaxq-story.html>.

⁶ Ninth Report of the Nunez Independent Monitor, Ninth Monitoring Period (July 1, 2019 through December 31, 2019), May 29, 2020, <https://www1.nyc.gov/assets/doc/downloads/pdf/9thMonitorsReport052920AsFiled.pdf>.

⁷ Graham Rayman, “Conditions at Rikers Island continuing to deteriorate, federal monitor says,” N.Y. Daily News, Aug. 24, 2021, <https://www.nydailynews.com/new-york/nyc-crime/ny-rikers-monitor-chaos-20210824-zvaltgam45bjrjfti7bckgptna-story.html>.

⁸ “New York City Bar Association Decries Humanitarian Crisis at Rikers Island,” NYC Bar Assoc., Oct. 11, 2021, <https://www.nycbar.org/media-listing/media/detail/nyc-bar-addresses-rikers-islands-poor-conditions>.

⁹ “Addressing Rikers Island Crisis: Recommendations to NYC District Attorneys,” NYC Bar Assoc., Oct. 15, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/addressing-rikers-island-inmate-death-crisis>.

¹⁰ See “Statement of the New York City Bar Association Urging Immediate Steps to Reduce Prison and Jail Populations to Prevent Spread of the COVID-19 Virus,” Mar. 20, 2020, https://s3.amazonaws.com/documents.nycbar.org/files/COVID_Prisons_Jails_Statement_FINAL.pdf; “Letter to Governor Cuomo Urging Release of New York State Prison Inmates at Risk of Coronavirus Infection,” Mar. 25, 2020, <https://s3.amazonaws.com/documents.nycbar.org/files/2020675-CommutationsforElderlyandInfirminmates.pdf>; “Statement of New York City Bar Association Setting Forth Legal Authority to Release Certain Categories of Incarcerated Persons from Local, State and Federal Jails and Prisons to Prevent the Further Spread of COVID-19,” Mar. 25, 2020,

RECOMMENDATIONS FOR THE COURT SYSTEM

While it is incumbent upon prosecutors to be judicious in seeking bail, and remaining mindful of judicial discretion, it is vital that judges exercise their discretion in a way that comports with the presumption of pretrial release established in the bail reform law. This presumption requires that judges (1) only set bail where there is a serious risk of flight and non-monetary conditions are inadequate and (2) where bail is set, consider a person’s ability to afford any such bail.¹¹ A study by the Center for Court Innovation and A More Just NYC has found that bail reform initially led to judges reducing their use of bail in the first part of 2020, but the rate at which bail was set increased significantly in the second half of the year even for cases that were eligible for bail before the July 2020 partial bail reform rollbacks.¹² The analysis also found that the bail statute’s new mandate that judges consider a person’s ability to afford any bail set has largely not been followed, with the rate at which people are able to pay for their release slightly decreasing.¹³ The study estimated that if judges simply returned to their decision-making patterns from the beginning of 2020, pretrial detention would decline by 32 percent among non-homicide cases, representing approximately 760 fewer people at Rikers.¹⁴ As the director of the Mayor’s Office of Criminal Justice testified before the State Assembly on October 1, 2021: “Overall, in all categories of crime, bail is imposed at slightly higher levels than before bail reforms.”¹⁵

https://s3.amazonaws.com/documents.nycbar.org/files/COVID19_Prisoner_Release_Guidance_Statement_FINAL.pdf; “Statement of the New York City Bar Association Urging Swifter Action to Reduce Prison and Jail Populations in Light of Coronavirus Pandemic,” April 15, 2020, https://s3.amazonaws.com/documents.nycbar.org/files/Prison_Jail_Reductions_COVID_FINAL.pdf; “Letter to Governor Cuomo Urging Further Action to Enhance Health & Safety Protections for Incarcerated People During COVID-19 Pandemic,” May 15, 2020, <https://s3.amazonaws.com/documents.nycbar.org/files/2020710-PrisonReformCOVID19Cuomo.pdf>; “Prioritizing COVID-19 Vaccine Distribution to Incarcerated People,” Jan. 29, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/prioritizing-covid-19-vaccine-distribution-to-incarcerated-people>; “Reiterating the Importance of Releasing New York State Prison Inmates at Risk of Coronavirus Infection and Prioritizing,” Feb. 5, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/prioritize-prisoner-covid-release-and-vaccine-distribution>; “Letter to Governor Hochul Regarding Recommendations for Combating Mass Incarceration in New York State,” Jan. 28, 2022, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/recommendations-for-combating-mass-incarceration-in-nys>.

¹¹ Michael Rempel and Krystal Rodriguez, “Bail Reform Revisited: The Impact of New York’s Amended Bail Law on Pretrial Detention,” Center for Court Innovation, May 2020, https://www.courtinnovation.org/sites/default/files/media/document/2020/Bail_Reform_Revisited_050720.pdf.

¹² “Closing Rikers Island: A Roadmap for Reducing Jail in New York City,” More Just NYC and the Center for Court Innovation, July 2021, https://www.courtinnovation.org/sites/default/files/media/document/2021/Roadmap_for_Reducing_Jail_NYC_07192021_0.pdf, at 65–66; Michael Rempel and Joanna Weill, “One Year Later: Bail Reform and Judicial Decision-Making in New York City,” Center for Court Innovation, April 2021, https://www.courtinnovation.org/sites/default/files/media/document/2021/One_Year_Bail_Reform_NYS.pdf, at 10.

¹³ *Id.* at 20.

¹⁴ *Id.* at 65–66. These figures account for the impact of the bail reform partial rollback in July 2021, which expanded the circumstances in which bail could be set. *Id.*

¹⁵ Jake Offenhartz (@jangeloof), Twitter, Oct. 1, 2021, <https://twitter.com/jangeloof/status/1443952887709712424>.

While we recognize the challenging environment in which all stakeholders are operating right now, it is imperative that the bail reform laws be given a chance to work and that they be fully implemented as intended. In addition to our previous recommendations towards this end, we urge that the following steps be taken:

First, we urge court officials at the highest level **to treat the urgent humanitarian crisis at Rikers Island as a court priority**. This declaration could be made by an order consistent with the court’s authority and responsibility to vindicate the ongoing constitutional violations occurring daily at Rikers. The order should also encourage all stakeholders—district attorneys, defense attorneys, judges, the Department of Correction, and the Department of Corrections and Community Supervision—to collaborate to reduce the population at Rikers to the greatest extent possible. At the onset of the pandemic, OCA and all other stakeholders worked together with great urgency to reduce New York City’s jail population to fewer than 4,000, the lowest level in a half century.¹⁶ Since then, the population has steadily returned to pre-pandemic levels yet, as the outgoing commissioner of the Department of Correction recently stated, the “jail population faces an equal or greater level of risk from COVID now as it did at the start of the pandemic.”¹⁷ Given the ongoing crisis, the same urgency should be employed by OCA and all stakeholders to work together to identify all people detained on bail, sentenced, or held on parole violations at Rikers who are suitable for release.

Second, the Office of Court Administration should establish mechanisms so that anyone detained pretrial on bail has the opportunity to **seek a review of any detention rulings** to ensure that they comply with the statutory framework. Notably in 2015, then-Chief Judge Jonathan Lippman responded to a similar crisis at Rikers Island by instituting a procedure for automatic *de novo* reviews of bail determinations whenever a person charged with a misdemeanor was unable to afford bail.¹⁸ This process allowed a single judge in each borough to more carefully consider individual circumstances and ability to afford bail in a way that was not possible in busy arraignment parts where people often appear just hours after their arrest.¹⁹

A renewed program should be established so that those detained pretrial in Criminal Court can seek review of detention rulings by a designated Supreme Court judge or part.²⁰ A similar procedure should be implemented to streamline Appellate Division review of Supreme Court detention rulings. We believe that instituting a mechanism for expedited and regular review of detention rulings could address any discrepancies in bail practices, ensure full compliance with the bail reform legislation, and significantly reduce the population at Rikers. Consolidating the review before a single judge in each borough would ensure uniformity in procedures and rulings. In

¹⁶ Troy Closson and Jonah E. Bromwich, “‘A Ticking Time Bomb’: City Jails Are Crowded Again, Stoking Covid Fears,” N.Y. Times, Sept. 22, 2021, <https://www.nytimes.com/2021/03/10/nyregion/nyc-jail-covid.html>.

¹⁷ “As COVID Surges In NYC Jails, Officials Quibble Over Blame,” Gothamist, *supra* note 4.

¹⁸ “Chief Judge Jonathan Lippman Announces Series of Reforms to Address Injustices of NY’s Current Bail System,” New York State Unified Court System, Oct. 1, 2015, http://ww2.nycourts.gov/sites/default/files/document/files/2018-05/PR15_13.pdf.

¹⁹ *Id.*

²⁰ CPL § 510.20(1) (providing that “[u]pon any occasion when a court has issued a securing order . . . the principal may make an application for recognizance, [or] release under non-monetary conditions or bail); CPL § 530.30(1)(c) (authorizing a judge of the Supreme Court to modify bail or release a defendant where a Criminal Court “[h]as fixed bail, where authorized, which is excessive”).

reviewing detention decisions, we believe that it is appropriate for reviewing judges to consider the dire and inhumane conditions at Rikers, which strongly militate against imposing bail and in favor of utilizing all non-custodial alternatives to ensure a person’s return to court. Several federal judges in New York have made similar determinations regarding the conditions at local federal detention centers and determined that pre-trial detention is not appropriate, imposed shorter custodial sentences, or granted compassionate release.²¹ Judges should also permit defense attorneys to waive the personal appearance of their clients where the Department of Correction cannot transport them to court (or even a room at Rikers for a virtual proceeding) in a timely fashion, as has frequently been the case during the pandemic.²²

Third, we submit that judges would benefit from **additional training in bail-setting practice**. For instance, in November 2019, the New York City Criminal Justice Agency launched a Pretrial Release Assessment tool, which offers an empirical assessment of a person’s likelihood of returning to court with the goal of aiding judges in exercising their discretion and reducing disparities that result from unguided bail determinations.²³ We believe judges would benefit from receiving additional training on the principles of bail reform, the use of the Release Assessment, and all available alternatives to pre-trial detention, including supervised release, before they are asked to make bail rulings. It is especially important that new judges and civil court judges without criminal practice experience assigned to off-hour arraignment parts receive this training before ruling on bail applications.

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²¹ See, e.g., *United States v. Ciprian*, 11 Cr. 1032-74 (PAE), (S.D.N.Y. Feb. 1, 2021) (“A day spent in prison under extreme lockdown and in fear of contracting a deadly virus exacts a price on a prisoner beyond that imposed by an ordinary day in prison. While not intended as punishment, incarceration in such conditions is, unavoidably, more punishing.”); *United States v. Hatcher*, 18 Cr. 454-10 (KPF), (S.D.N.Y. Apr. 19, 2021) (collecting cases); see also Noah Goldberg and Stephen Rex Brown, “Brutal conditions in NYC jails during COVID pandemic caused federal judges to impose lighter sentences: analysis,” N.Y. Daily News, July 11, 2021, <https://www.nydailynews.com/new-york/ny-federal-judges-gave-lighter-sentences-nyc-jails-covid-20210712-owlofn4wzngmfmcgb6raighkvq-story.html>.

²² George Joseph, “Crisis At Rikers: How Case Delays Are Locking Up More and More People For Years Without Trial,” Gothamist, Nov. 23, 2021, <https://gothamist.com/news/crisis-rikers-how-case-delays-are-locking-more-and-more-people-years-without-trial>.

²³ “Closing Rikers Island: A Roadmap for Reducing Jail in New York City,” *supra* note 12, at 22.